PHED Committee #3
September 27, 2021
Worksession

M E M O R A N D U M

September 22, 2021

TO: PHED Committee

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Bill 5-21, Agricultural Land Preservation – Solar Collection System – Dedication of Business Personal Property Tax Revenue

PURPOSE: Worksession –Committee recommendation expected

Expected Attendees:
Jeremy Criss, Office of Agriculture

Bill 5-21, Agricultural Land Preservation – Solar Collection System – Dedication of Business Personal Property Tax Revenue, sponsored by Lead Sponsor Councilmember Friedson and Co-Sponsors Councilmembers Rice and Katz, was introduced on January 19, 2021. A public hearing on the bill was held on March 9, 2021

Bill 5-21 would dedicate business personal property tax revenue received for a solar collection system constructed in the Agricultural Reserve Zone for the Agricultural Land Preservation Fund. The Bill would define a solar collection system as:

> …an arrangement of panels or other solar energy devices that provide for the collection, inversion, storage, and distribution of solar energy for electricity generation, space heating, space cooling, or water heating. A Solar Collection System includes freestanding or mounted devices.

The Agricultural Land Preservation Fund is an existing special, non-lapsing revolving fund used to purchase property interests, such as an agricultural easement, to preserve agricultural land in the County.

Public Hearing

Michael Jamison, representing the Agricultural Preservation Advisory Board (©13), Doug Lechlider, Chair of the Agricultural Advisory Committee (©14), and Randy Stabler, representing Pleasant Valley Farm, supported the Bill as a small step to help finance the Agricultural Land Preservation Fund. Doug Boucher opposed the Bill (©16) arguing that the restrictions in siting solar facilities in the Agricultural Reserve added by the Council in ZTA 20-01 will significantly reduce the anticipated personal property tax revenue. Mr. Boucher argued that this money should be redirected to mitigate racial inequity in the agricultural industry rather than the Agricultural Land Preservation Fund.

Issues

1. What is the fiscal and economic impact of the Bill?

Finance was unable to locate any existing business personal property tax accounts located in the Agricultural Reserve for a solar facility, but ZTA 20-01, Solar Collection System – AR Zone Standards, recently enacted by the District Council, will reduce zoning restrictions on the siting of a solar facility in the Agricultural Reserve. ZTA 20-01 will permit the location of a larger solar facility than was previously permitted in certain areas of the Agricultural Reserve as a conditional use. However, no new applications to build a solar collection system in the AR Zone have been filed to date. OMB was unable to estimate the expected revenue from business personal property tax paid for solar collection facilities in the AR Zone (©10-12). OMB speculated that ZTA 20-01 may have a positive fiscal impact if it encourages new solar collection facilities in the AR Zone, but the Bill designating these resources would not create new revenue.

OLO concluded that Bill 5-21 would have an insignificant impact on the County's economy (©8-9).

2. What is the racial equity and social justice impact of the Bill?

OLO concluded that Bill 5-21 may have a negative effect on racial equity and social justice if the County receives a significant amount of business personal property tax revenue from solar facilities in the Agricultural Reserve (©6-7). OLO pointed out that most residents of the Agricultural Reserve are white and that dedicating this revenue to the Agricultural Land Preservation Fund would mostly benefit these residents. In addition, OLO stated that the dedication of this potential revenue would reduce the amount of revenue for the General Fund programs dedicated to improving racial equity and social justice. However, OLO also noted that the strict limits on the location of a solar facility in the Agricultural Reserve by ZTA 20-01 as enacted could limit the amount of potential business personal tax revenue received and thereby limit the negative effect on racial equity and social justice.

3. Should this potential new revenue be dedicated to the Agricultural Land Preservation Fund?

There is a logical connection between business personal property tax revenue from new solar collection facilities located in the AR Zone and the Agricultural Land Preservation Fund. The Fund must be used to purchase an agricultural easement to dedicate land in the County for agricultural purposes. Since the construction of a solar collection facility in the AR Zone reduces the amount of property dedicated to agriculture, using the revenue from these facilities can replace some of this land for agriculture. However, the dedication of any revenue for a specific purpose eliminates its use for other worthy purposes. OLO pointed out that the purchase of agricultural easements mostly benefits the disproportionately white property owners in the AR Zone. The Council must adopt an operating and capital budget each year by balancing competing needs of its residents. The Council allocates the County's estimated revenue each year in the annual budget based upon the needs of its residents for that year. Any dedication of a revenue stream in law takes that revenue out of the annual decision-making process unless the Council amends the law in the budget.[1]

This packet contains:

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[1] Despite a dedication of revenue in County law, the Council can override the dedication for a different use in the annual budget for that year only because the annual operating budget resolution has the force of law.

Bill No. 5-21
Concerning Agricultural Land Preservation – Solar Collection System – Dedication of Business Personal Property Tax Revenue
Revised: 01/19/2021 Draft No.3
Introduced: January 19, 2021
Expires: July 19, 2022
Enacted:
Executive:
Effective:
Sunset Date: None
Ch.____, Laws of Mont. Co.

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Friedson
Co-Sponsors: Councilmembers Rice and Katz

AN ACT to:
(1) dedicate business personal property tax revenue received for certain solar collection systems for the Agricultural Land Preservation Fund;
(2) increase the land in the County preserved for agricultural uses; and
(3) generally amend the law governing the preservation of land for agricultural uses.

By amending
Montgomery County Code
Chapter 2B, Agricultural Land Preservation
Sections 2B-1 and 2B-9

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 2B-1 and 2B-9 are amended as follows:

2B-1. Definitions.

In this Chapter, the following words and phrases have the meanings indicated:

* * *

Significant Agricultural Resource or Significant Agricultural Capability means land which, if properly agronomically managed and under normal growing conditions, the Office, after consulting local agricultural support agencies, finds can sustain a profitable farm enterprise.

<u>*Solar Collection System* means an arrangement of panels or other solar energy devices that provide for the collection, inversion, storage, and distribution of solar energy for electricity generation, space heating, space cooling, or water heating. A Solar Collection System includes freestanding or mounted devices.</u>

State Agricultural Easement means an easement established under Subtitle 5 of Title 2 of the Agriculture Article.

* * *

2B-9. Purchase and value of agricultural easements.

(a) The Fund is a special, non-lapsing revolving fund for agricultural land preservation purposes. It consists of:

(1) the County's share of the State agricultural transfer tax;

(2) payments received by the County for the repurchase, release, reimbursement, and termination of an agricultural easement; **[and]**

(3) <u>the County's share of the business personal property tax collected for a solar collection system located in the Agricultural Reserve Zone; and</u>

<u>(4)</u> any other funds available to buy agricultural easements under this Article.

(b) The County must use funds from the County's share of the State agricultural transfer tax, business personal property tax collected for a solar collection system located in the Agricultural Reserve Zone, and any other revolving funds for the purposes of this Article before using any other County funds for these purposes.

(c) The County may buy an agricultural easement to preserve agricultural land in the County. To buy an easement, the County may use:

(1) negotiations;

(2) competitive bidding; or

(3) any other method that is fair and equitable to the landowner and the County.

(d) The purchase price may be based on an appraisal or any other evidence of value under criteria in applicable regulations.

(e) Priority for buying easements must be given to any applicant who meets all **[**of**]** the following criteria:

(1) the proposed purchase price for the agricultural easement does not exceed either the appraised fair market value of the easement or a commercially reasonable value for the easement;

(2) the land is designated in the applicable master plan as agricultural;

(3) the land borders a municipality or other developing area and is likely to be developed in the foreseeable future; and

(4) any other factor the Executive finds necessary to preserve agricultural land.

(f) The County Executive or the Executive's designee may agree in writing to buy an agricultural easement if the landowner:

(1) files a good-faith application to the Foundation for the purchase of an agricultural easement by the State; and

(2) accepts a Foundation offer if the price offered by the Foundation is equal to or higher than the price the County offered. If the Foundation does not agree to buy an easement subject to a conditional agreement under this subsection, the County must buy the easement at the price the County offered under the conditional agreement.

(g) In addition to its authority to buy agricultural easements under this Article, the County may accept the donation of an agricultural easement or another interest in property for agricultural land preservation purposes.

Sec. 2. Transition.

The amendments in Section 1 must apply to business personal property tax collected after the date this Act takes effect.

LEGISLATIVE REQUEST REPORT

Bill 5-21
Agricultural Land Preservation – Solar Collection System – Dedication of Business Personal Property Tax Revenue

DESCRIPTION:	Bill 5-21 would dedicate business personal property tax revenue received for a solar collection system constructed in the Agricultural Reserve Zone for the Agricultural Land Preservation Fund. The Agricultural Land Preservation Fund is an existing special, non-lapsing revolving fund used to purchase property interests, such as an agricultural easement, to preserve agricultural land in the County.
PROBLEM:	Additional funds are necessary to preserve agricultural land in the County.
GOALS AND OBJECTIVES:	Increase funding for the Agricultural Land Preservation Fund.
COORDINATION:	Office of Agriculture, Finance
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC IMPACT:	Office of Legislative Oversight
RACIAL EQUITY AND SOCIAL JUSTICE IMPACT:	Office of Legislative Oversight
EVALUATION:	To be determined.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	Not applicable.
PENALTIES:	None.

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Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

Bill 5-21: Agricultural Land Preservation - Solar Collection System - Dedication of Business Personal Property Tax Revenue

Summary

The Office of Legislative Oversight (OLO) expects Bill 5-21 to have either no impact or a slightly negative impact on racial equity and social justice in Montgomery County.

Background

On January 19, 2021, the County Council introduced Bill 5-21 as a companion bill to Zoning Text Amendment 20-01-Solar Collection System-AR Zone Standards,[1] which would allow for the construction of solar collection systems in the Agricultural Reserve.[2] Bill 5-21 would allow the County to allocate a portion of tax proceeds generated from the solar collection systems to support the Agricultural Land Preservation Fund. More specifically, if enacted, Bill 5-21 would:

- Dedicate business personal property tax revenue received for certain solar collection systems for the Agricultural Land Preservation Fund;
- Increase the land in the County preserved for agricultural uses; and
- Generally amend the law governing the preservation of land for agricultural uses.[3]

Anticipated RESJ Impacts

The potential impact of Bill 5-21 on racial equity and social justice in the County could be significant if the personal property tax revenue generated from new solar collection systems in the Agriculture Reserve to help fund the Agriculture Land Preservation Fund were significant.

White farmers likely account for the vast majority of residents in the Agriculture Reserve since they account for 95% of farmers statewide.[4] In turn, White residents would benefit the most from new revenue allocated to the Agriculture Land Preservation Fund because they account for a majority of the residents in the Agriculture Reserve.

Moreover, the dedication of new personal property tax revenue to the Agriculture Land Preservation Fund instead of the General Fund could harm residents who depend on County-funded programs and services supported by the General Fund, including residents of color and low-income residents.

The amendments that the Council is considering to adopt ZTA 20-01, however, suggest that new personal property tax revenue from solar collection systems in the Agriculture Reserve will be limited as few farms will be able to install solar collection systems under ZTA 20-01.[5] As such, OLO anticipates that Bill 5-21 will have no impact or a very limited impact on racial equity and social justice in the County because ZTA 20-01 will yield few new solar collection systems in the Agriculture Reserve.

Caveats

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

Contributions

OLO staffer Dr. Theo Holt drafted this racial equity and social justice impact statement with assistance from OLO colleague Dr. Elaine Bonner-Tompkins

[1] Montgomery County Council, Zoning Text Amendment 20-01, Solar Collection System-AR Zone Standards, January 2020, Montgomery County, Maryland. https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/zta/2020/ZTA_20-01.pdf
[2] Ibid.
[3] Montgomery County Council, Bill 5-21, Agricultural Land Preservation-Solar Collection System-Dedication of Business Personal Property Tax Revenue, January 19, 2021, Montgomery County Council.
[4] Office of Agriculture, 2017 Census of Agriculture, Montgomery County Statistics, Montgomery County, Maryland. https://www.montgomerycountymd.gov/agservices/Resources/Files/2017AGCensusMCFactSheetFINAL.pdf
[5] Montgomery County Council, Council Session, Evening public Hearing, ZTA 20-01, March 3, 2020, Montgomery County, Maryland. https://youtu.be/1rGkbDqN_fo

Economic Impact Statement

Office of Legislative Oversight

BILL 5-21 Agricultural Land Preservation – Solar Collection System – Dedication of Business Personal Property Tax Revenue

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that enacting Bill 5-21 would have an insignificant impact on economic conditions in the County.

BACKGROUND

The goal of Bill 5-21, introduced on January 19, 2021, is to raise funds to preserve agricultural land in the County.[1] If enacted, the bill would "dedicate business personal property tax revenue received for a solar collection system constructed in the Agricultural Reserve Zone for the Agricultural Land Preservation Fund," which is a fund used to purchase property interests to preserve agricultural land. Importantly, the bill would not change business personal property tax rates. Instead, it would earmark revenues generated from those taxes to the existing Agricultural Land Preservation Fund.

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

Because it would not change business personal property tax *rates*, OLO does not anticipate that enacting Bill 5-21 would result in direct economic impacts to private organizations or residents in the County.

No methodologies were used in this statement. The claims made in subsequent sections are based on the judgment of OLO analysts.

VARIABLES

Not applicable.

[1] Montgomery County Council, Bill 5-21, Agricultural Land Preservation – Solar Collection System – Dedication of Business Personal Property Tax Revenue, Introduced on January 19, 2021, Montgomery County, Maryland. See bill in Introduction Staff Report, https://apps.montgomerycountymd.gov/ccllims/DownloadFilePage?FileName=2696_1_13181_Bill_5-2021_Introduction_20210119.pdf.

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organization

OLO believes that Bill 5-21 would have insignificant economic impacts on private organizations in the County in terms of the Council's priority indicators, namely business income, workforce, operating costs, capital investments, property values, taxation policy, economic development, and competitiveness.[2]

Residents

OLO believes that Bill 5-21 would have no economic impacts on County residents in terms of the Council's priority indicators.

QUESTIONS FOR CONSIDERATION

Not applicable.

WORKS CITED

Montgomery County Council. Bill 10-19, Legislative Branch – Economic Impact Statements – Amendments. Enacted on July 30, 2019. Montgomery County, Maryland.

Montgomery County Council. Bill 5-21, Agricultural Land Preservation – Solar Collection System – Dedication of Business Personal Property Tax Revenue. Introduced on January 19, 2021. Montgomery County, Maryland.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.

[2] For the Council's priority indicators, see Montgomery County Council, Bill 10-19 Legislative Branch – Economic Impact Statements – Amendments, Enacted on July 30, 2019, Montgomery County, Maryland, 3.

Fiscal Impact Statement
Bill 5-21, Agricultural Land Preservation – Solar Collection System – Dedication of Business Personal Property Tax Revenue

1. Legislative Summary

Bill 5-21 would dedicate business personal property tax revenue received for a solar collection system constructed in the Agricultural Reserve Zone for the Agricultural Land Preservation Fund. The proposed legislation would define a solar collection system as: an arrangement of panels or other solar energy devices that provide for the collection, inversion, storage, and distribution of solar energy for electricity generation, space heating, space cooling, or water heating. A Solar Collection System includes freestanding or mounted devices.

The Agricultural Land Preservation Fund is an existing special, non-lapsing revolving fund used to purchase property interests, such as an agricultural easement, to preserve agricultural land in the County.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

The proposed legislation will program the County share of personal property taxes paid by solar companies that construct solar fields in the Agricultural Reserve (AR) zone. The proceeds will be deposited into the General Fund and then the proposed legislation authorizes these proceeds to be programmed to Ag Land Preservation Capital Improvement Program project for agricultural easement purchases.

The Office of Agriculture (OAG) and the Department of Finance indicate that the County does not currently have solar companies who are registered with the State to construct solar fields in the AR Zone. On February 23, 2021, the County Council adopted Zoning Text Amendment (ZTA) 20-01, Solar Collection System – AR Zone Standards, that authorizes solar collection systems to exist in the AR zone. The OAG projects that two MW solar fields in the AR zone will each encompass up to 20 acres of land. The Solar ZTA permits up to a maximum of 1,800 acres of solar fields in the AR zone which equates to a total of 90 solar fields in the AR zone each being 20 acres in size. It is estimated that the solar industry will invest approximately $85,000 per acre to construct solar fields and this would translate into a total investment of $153,000,000 for a maximum of 1,800 acres in solar fields in the AR zone. The OAG projects that a portion of the $153,000,000 in investments will be captured by the State as part of the personal business property taxes paid by the solar companies and there is no sufficient information at this time to identify the exact amount of the County share of these business personal property taxes.

3. **Revenue and expenditure estimates covering at least the next 6 fiscal years.**

   With the adoption of the solar ZTA in the AR zone as a Conditional Use of approval by the Hearing Examiner, it will take approximately two years before construction of solar fields in the AR zone begin. The County may begin to see proceeds collected from solar companies during the FY24-26 time frame.

4. **An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

   Not applicable.

5. **An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

   Not applicable.

6. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

   The County Council adopted ZTA 20-01 with the requirement that County must revisit the solar ZTA in 2023 to evaluate whether the ZTA achieved the desired results of up to 1,800 acres in solar fields in the AR zone. Any subsequent changes to the ZTA could impact future revenues or expenditure. The Bill does not authorize future spending.

7. **An estimate of the staff time needed to implement the bill.**

   Implementation of this bill will be conducted by existing staff resources.

8. **An explanation of how the addition of new staff responsibilities would affect other duties.**

   The OAG has one full-time equivalent assigned to the Ag Land Preservation (CIP) who will implement the legislative intent of the proposed legislation. The OAG does not anticipate the need for new additional staff until there is a better understanding of the number of solar companies that register with the State, pay business personal property taxes, and enter into lease agreements with AR zone landowners to construct solar fields. The potential revenues from this legislation including monitoring and reporting will be incorporated into the existing Ag Land Preservation CIP reporting requirements.

9. **An estimate of costs when an additional appropriation is needed.**

The Ag Land Preservation CIP will need to be amended to include the new source of funding that the proposed legislation references. This assumes that the proposed legislation will program this funding from the General Fund to the Ag Land Preservation CIP. The OAG staff will continue to monitor all the sources of revenue identified for this project and request adjustments to the level of appropriation accordingly.

10. **A description of any variable that could affect revenue and cost estimates.**

The amount of funding from the proposed legislation will be dependent on the number of solar companies that register with the State to construct solar fields in the AR zone of the County. Due the protection of capability class II soils for siting solar fields, the adopted - ZTA 20-01 may reduce the number of solar companies (90 solar fields each totaling 20 acres = 1,800 acres total in the AR zone) that construct solar fields in the County.

11. **Ranges of revenue or expenditures that are uncertain or difficult to project.**

The range of revenues and/or expenditures are difficult to project because the number of potential solar companies are currently unknown.

12. **If a bill is likely to have no fiscal impact, why that is the case.**

The proposed legislation may have a positive fiscal impact on County revenues if ZTA 20-01 is adopted. The proposed legislation will result in the County receiving revenue from the local shares of business personal property taxes that solar companies pay to construct solar fields in the Agricultural Reserve zone where the revenue can be programmed to purchase agricultural preservation easements.

13. **Other fiscal impacts or comments.**

Not applicable.

14. **The following contributed to and concurred with this analysis:**

Jeremy Criss, Director, Office of Agriculture
Jane Mukira, Office of Management and Budget

Chris Mullin for Jennifer Bryant

4/30/21

Jennifer Bryant, Director
Office of Management and Budget

Date

AGRICULTURAL PRESERVATION ADVISORY BOARD

February 16, 2020

The Honorable Tom Hucker, President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20856

Re: Bill 5-21, Agricultural Land Preservation – Solar Collection System – Dedication of Business Personal Property Tax Revenue

Dear Council President Hucker,

The Montgomery County Agricultural Preservation Advisory Board continues to seek new and alternative sources of funding to purchase agricultural easements. Finding a sustainable source of funding was a challenge prior to the pandemic and remains a challenge.

The Board supports Bill 5-21, Agricultural Land Preservation – Solar Collection System – Dedication of Business Personal Property Tax Revenue. We understand that the public hearing for the bill was postponed from its original 2/9/2021 date. Bill 5-21 is directly linked to ZTA 20-01 and we acknowledge the final discussion on 5-21 will depend upon the Council's final vote on the solar ZTA.

However, the Board felt compelled to support the bill as it attempts to address the funding dilemma for the Agricultural Preservation CIP. We respectfully ask a favorable vote on Bill 5-21 if ZTA 20-01 is enacted by the Council.

Sincerely,

Michael B. Jamison

Michael Jamison, Chairman

cc: Jeremy Criss, Director, Office of Agriculture

Office of Agricultural Services
18410 Muncaster Road · Derwood, Maryland 20855 · 301/590-2823, FAX 301/590-2839

AGRICULTURAL ADVISORY COMMITTEE

March 8, 2021

The Honorable Tom Hucker, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear Council President Hucker: Bill 5-21 Agricultural Land Preservation – Solar Collection System – Dedication of Business Personal Property Tax Revenue

On behalf of the Montgomery County Agricultural Advisory Committee-AAC, please accept this letter in support of the Bill 5-21 Agricultural Land Preservation – Solar Collection System – Dedication of Business Personal Property Tax Revenue.

The AAC is encouraged by the efforts of Councilmembers Andrew Friedson, Craig Rice and Sidney Katz to finally identify a new source of funding for our Agricultural Land Preservation Programs that desperately need a long-term sustainable source of funding to address the growing demand from our farmers.

The traditional source of funding for our agricultural land preservation programs is the County-share of the State Agricultural Transfer Tax and unfortunately this source of funding has continued to underperform since the great recession. This environment combined with the collapse of the private Transferable Development Rights-TDRs and Building Lot Termination-BLT programs explained further below have resulted in few if any options for our farmers to utilize the equity in their farms to either expand their operations or create estate planning for the next generation of the family farm.

We are hopeful the Bill 5-21 working in conjunction with the Solar ZTA 20-01 will result in solar companies registering their business entities with the Department of Assessments and Taxation and collections of the County-share of Business Personal Property Taxes. While it is too early to project how much revenue the intended result of this Bill 5-21 will generate because of Solar ZTA, the AAC is encouraged by the Council support demonstrated by the bill.

The AAC would like to formerly request that the County Council conduct a comprehensive briefing on our Agricultural Land Preservation programs that is long overdue. This briefing will help to demonstrate the farmer demand for our programs, but more importantly, it will help to educate the County Council on the impact of the Ambiguity Clause within Division 4.9 Overlay Zones as outlined on the top of the next page that has eliminated demand for private TDRs and BLTs. This clause enables the Planning Board and staff to ignore the TDR and BLT requirements of underlying zones. We strongly believe this single clause represents the primary reason for the current environment where private TDRs and BLTs are not being acquired from our farmers.

Division 4.9. Overlay Zones
Section 4.9.1.C. In General

C. Standards and Requirements

Development in an Overlay zone must satisfy the standards and requirements of the underlying zone, except as modified by Division 4.9. If there is an ambiguity as to whether the requirements of the underlying zone or Overlay zone apply, the requirements of the Overlay zone apply. Site plan approval is required under Section 7.3.4, except where exempted by the applicable Overlay zone.

We thank the County Council for this opportunity to present our views and we will participate in the Council Committee Work Session when this Bill 5-21 is scheduled.

Sincerely,

Doug Lechlider, Chairman

Cc: Marc Elrich, County Executive

Testimony on County Council Bill 5-21 – Agricultural Preservation

Doug Boucher – douglas.h.boucher@gmail.com

March 9, 2021

The situation concerning this bill has changed drastically since I signed up to testify on it back in January. At that time, it was expected that the County Council would pass ZTA 20-01, allowing 1800 acres of community solar in the Agricultural Reserve, with the compromise amendments agreed on in December by the Farmland Solar Stakeholder Workgroup on which I served. Most of those compromises could be incorporated into the ZTA, but one of them would require additional legislation, and would use the revenue from property taxes due to community solar to support "farming-related services in the county." These would include:

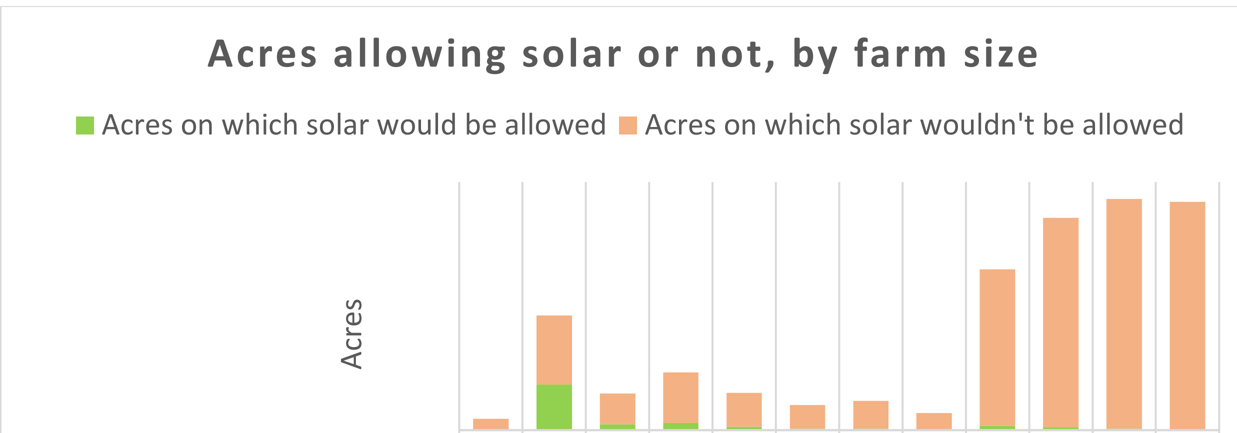
- Rent relief
- Land preservation
- Support for young farmers
- Promotion of table crops
- Other agriculture-related support

Recognizing the historic racism in agriculture in the county and in the U.S., preference would be given to Black and Hispanic farmers in allocating these resources. The Office of Agriculture and the farming community would be consulted on how best to allocate the revenue from property taxes on community solar, which were estimated in an analysis by County staff, to be $3,574,018 over ten years.

That was the situation in mid-January. However, since then things have changed a great deal. The full Council, before it passed the ZTA, adopted two amendments that severely reduce the amount of community solar allowed. In particular, it made illegal any solar project that covered even one square inch of capability class 2 soils – the most abundant kind of soil in the Agricultural Reserve.

Three different scientific analyses show how this amendment will make it impossible for community solar to reach even a small fraction of the 1800 acres supposedly allowed by the ZTA. These were:

1) My own analysis, submitted to the Council and the Workgroup, showing that the one-project per parcel restriction in state law, effectively makes the number of acres available only about 4,000 of the 103,000 acres of the Ag Reserve, <u>before</u> applying the class 2 soil and other exclusions. This is due to the extremely unequal distribution of farmland in the County, with just 30 out of 558 farms owning 58% of the land.



Farm size - lower limit, in acres	1	10	50	70	100	140	180	220	260	500	1,000	2,000
Acres on which solar wouldn't be allowed	642	3,884	1,728	2,861	1,908	1,319	1,570	920	8,830	11,810	12,960	12,835
Acres on which solar would be allowed	-	2,580	340	400	190	90	80	40	250	170	90	40

2) The analysis of that the county Planning Department's GIS team submitted to the Council, demonstrating that with exclusion of class 2 soils, only 1650 acres of projects could be built, <u>even</u> under the extremely unrealistic assumptions that a) every single location would be close enough to three-phase electrical lines to connect it to the grid, b) every single landowner who could potentially lease land for a solar project, would decide

to do it. (The experience of the solar industry is that generally only about 1 landowner in 20 decides to do so.)

3) The detailed, GIS-based analysis submitted by the MDV-SEIA and the CCSA, which took into consideration all the factors limiting projects, including the one-project-per-parcel rule, connection to the grid, and landowner willingness to participate. This analysis showed that the most likely number of projects that would be built was...just two. In other words, we would have 25 or 30 acres of solar, rather than the 1800 supposedly permitted by the ZTA. Even under the most optimistic expectation of landowner willingness – say, one in four rather that the one in 20 that is the typical experience --- we would only have 125 to 150 acres of community solar.

These analyses – none of which have even been claimed to be incorrect -- show that you are no longer talking about how to spend $ 3.5 million in tax revenue over ten years. Rather, you're now talking about having at most less than $ 300,000 over ten years – i.e. an average of just $ 30,000 annually. And that's under the most optimistic and frankly very unrealistic assumptions.

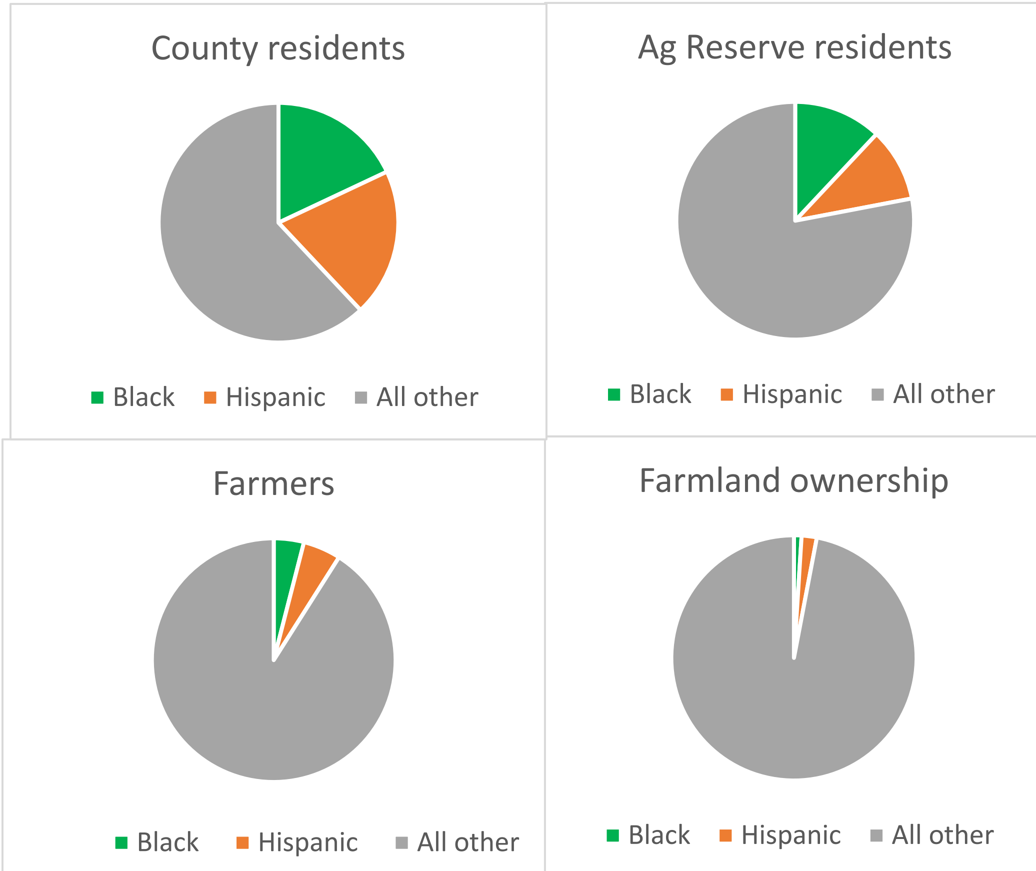
Now, I realize that some of the members of the Council have expressed the hope that these analyses are wrong and that somehow a lot more solar projects than estimated will be built. One member even has said that he thought that excluding class 2 soils would somehow increase the number of projects that would be developed. So let me say two things about this.

First of all, as has often been said. "Hope is not a policy." And more directly in this case, hope will not change the soil maps.

Secondly, it's simply not good governance to undertake spending assuming that you'll have more than ten times as much money as the analyses show you'll have. Clearly, there will not be the large windfall in property taxes that was expected, and that would have made it possible to spend money on several different kinds of programs. This means that you'll have to make choices.

In this light, the choice to put all the money into agricultural preservation is a bad one, for several reasons:

1) It's expensive. In recent years the cost of agricultural land preservation has been running at or above $ 4,000 an acre. So you would only be able to preserve about 7 acres a year.
2) It benefits the richest landowners. As shown above, the distribution of farmland in the county is extremely unequal, with 6% of farmers owning 58% of the farmland, according to the 2017 Agricultural Census. Those who have the most land are those most likely to be paid to preserve it. Thus, putting money into preservation alone is regressive.
3) It's racially discriminatory, as shown by the Census data and as indicated by the Racial Equity and Social Justice Impact Statement on Bill 5-21 that you have received from the Office of Legislative Oversight. This is because the 4% of county residents who live in the Ag Reserve are both Whiter and wealthier than the rest of the county, and there is historic racial inequity in farmland ownership. Black and Latinx residents are severely underrepresented in the county's agricultural community. The Census Bureau's 2013-2018 ACS Survey and the USDA's Census of Agriculture 2017 show that:
    - Black residents make up 18% of the county's population, but only 12% of the population of the Agricultural Reserve. They are only 4% of the county's farmers and have only 1% of the farmland.
    - Latinx residents make up 20% of the county's population, but only 10% of the population of the Agricultural Reserve. They are only 5% of the county's farmers and have only 2% of the farmland.
    - Farms owned by White farmers in the county average 124 acres. Those owned by Latinx farmers average only 42 acres, and those owned by Black farmers average just 18 ½ acres



4) It reinforces a system that produces commodity feed grain crops, landscaping plants and horses for equestrian enjoyment, but very little food for people. As the census data show, only 1.3% of our farmland produces fruits and vegetables, while 2/3 of the land is in feed grains and hay. This land use pattern is why less than 1% of the county's food comes from the Ag Reserve, and less than 1% of what the Ag Reserve produces is consumed in the county.

Facing this reality, I urge you to change the allocation of the small amount of money that will come from community solar in the Ag Reserve. Rather than using it for agricultural preservation, which would only further solidify the extreme inequality and systemic racism of current farmland ownership, the Council should use this revenue to take a small initial step towards racial equity and social justice.

Specifically, I would encourage you to set up a program to help young Black and Latinx county residents get started in farming. It can help them pay for costs such as land rental, equipment, supplies, marketing and transportation, as well as to hire young people to work and gain experience in farming. It cannot be large, because of the extremely limited amount of revenue that the ZTA as adopted will generate. But it can be a start.

In summary, please be realistic about the impact of the decisions you chose to take on the ZTA. You have reduced the benefits that it will have, for climate change, clean energy and the electric bills of low-income residents, to practically nothing. But at least you can use the small amount of tax revenue it will generate, to begin the transition to a more just agriculture in Montgomery County, rather than reinforcing the social and racial inequity of the current system.